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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Mohammed Garadi, individually and on behalf of all
others similarly situated,

Plaintiff,

1:19-cv-03209-RJD-ST

v.

Mars Wrigley Confectionery US, LLC,

Defendant.

**MARS WRIGLEY CONFECTIONARY US, LLC'S
ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT**

INTRODUCTION

Defendant Mars Wrigley Confectionery US, LLC (“Mars”) hereby submits this Answer¹ to Plaintiffs’ First Amended Complaint (the “Complaint”). In response to the numbered paragraphs of the Complaint, Mars admits, denies, or otherwise responds as set forth below. All allegations are denied unless expressly admitted.

1. Mars admits that it manufactures, distributes, markets, labels and sells ice cream products. Mars otherwise denies the allegations in this paragraph.

2. Mars admits that it manufactures the products listed in this paragraph. Mars otherwise denies the allegations in this paragraph.

3. Mars admits the quoted language appears on select boxes of the Product.

4. Mars lacks sufficient knowledge or information to determine the truth or accuracy of the allegations of paragraph 4, and on this basis denies those allegations.

5. Mars lacks sufficient knowledge or information to determine the truth or accuracy of the allegations of paragraph 5, and on this basis denies those allegations.

6. Mars lacks sufficient knowledge or information to determine the truth or accuracy of the allegations of paragraph 6, and on this basis denies those allegations.

7. Mars lacks sufficient knowledge or information to determine the truth or accuracy of the allegations of paragraph 7, and on this basis denies those allegations.

8. Mars lacks sufficient knowledge or information to determine the truth or accuracy of the allegations of paragraph 8, and on this basis denies those allegations.

9. Mars lacks sufficient knowledge or information to determine the truth or accuracy of

¹ Mars has filed this answer to prevent Plaintiffs from avoiding the pending motion to dismiss by voluntarily dismissing their claims before the Court has ruled. Pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, now that Mars has filed an answer, an action “may be dismissed at the plaintiff’s request only by court order, on terms that the court considers proper.” Fed. R. Civ. P. 41(a)(2); *see also Beary v. W. Publ’g Co.*, 763 F.2d 66, 68 (2d Cir. 1985) (“Although [Rule] 12(b) encourages the responsive pleader to file a motion to dismiss before pleading, nothing in the rule prohibits the filing of a motion to dismiss with an answer.”); *Brunig v. Clark*, 560 F.3d 292, 294 (5th Cir. 2009) (Defendants are “not obligated to wait to answer until the court ha[s] ruled on the motion [to dismiss]”).

the allegations in paragraph 9, and on that basis denies those allegations.

10. Mars lacks sufficient knowledge or information to determine the truth or accuracy of the allegations of paragraph 10, and on this basis denies those allegations.

11. Mars lacks sufficient knowledge or information to determine the truth or accuracy of the allegations of paragraph 11, and on this basis denies those allegations.

12. Mars lacks sufficient knowledge or information to determine the truth or accuracy of the allegations in paragraph 12, and on that basis denies those allegations.

13. Mars lacks sufficient knowledge or information to determine the truth or accuracy of the allegations of paragraph 13, and on this basis denies those allegations.

14. Mars lacks sufficient knowledge or information to determine the truth or accuracy of the allegations of paragraph 14, and on this basis denies those allegations.

15. Mars lacks sufficient knowledge or information to determine the truth or accuracy of the allegations of paragraph 15, and on this basis denies those allegations.

16. Mars lacks sufficient knowledge or information to determine the truth or accuracy of the allegations of paragraph 16, and on this basis denies those allegations.

17. Mars lacks sufficient knowledge or information to determine the truth or accuracy of the allegations in paragraph 17, and on that basis denies those allegations.

18. Mars lacks sufficient knowledge or information to determine the truth or accuracy of the allegations of paragraph 18, and on this basis denies those allegations.

19. Mars lacks sufficient knowledge or information to determine the truth or accuracy of the allegations of paragraph 19, and on this basis denies those allegations.

20. Mars lacks sufficient knowledge or information to determine the truth or accuracy of the allegations of paragraph 20, and on this basis denies those allegations.

21. Mars lacks sufficient knowledge or information to determine the truth or accuracy of the allegations of paragraph 21, and on this basis denies those allegations.

22. Mars lacks sufficient knowledge or information to determine the truth or accuracy of the allegations of paragraph 22, and on this basis denies those allegations.

23. Mars lacks sufficient knowledge or information to determine the truth or accuracy of the allegations in paragraph 23, and on that basis denies those allegations.

24. Mars lacks sufficient knowledge or information to determine the truth or accuracy of the allegations of paragraph 24, and on this basis denies those allegations.

25. The allegations in paragraph 25 purport to summarize external sources which speak for themselves. Mars otherwise denies the allegations in paragraph 25.

26. The allegations in paragraph 26 purport to summarize external sources which speak for themselves. Mars otherwise denies the allegations in paragraph 26.

27. Mars lacks sufficient knowledge or information to determine the truth or accuracy of the allegations of paragraph 27, and on this basis denies those allegations.

28. The allegations in paragraph 28 purport to summarize external sources which speak for themselves. Mars otherwise denies the allegations in paragraph 28.

29. Mars lacks sufficient knowledge or information to determine the truth or accuracy of the allegations of paragraph 29, and on this basis denies those allegations.

30. The allegations in paragraph 30 purport to summarize external sources which speak for themselves. Mars otherwise denies the allegations in paragraph 30.

31. The allegations in paragraph 31 purport to summarize external sources which speak for themselves. Mars otherwise denies the allegations in paragraph 31.

32. Mars lacks sufficient knowledge or information to determine the truth or accuracy of the allegations of paragraph 32, and on this basis denies those allegations.

33. Mars lacks sufficient knowledge or information to determine the truth or accuracy of the allegations of paragraph 33, and on this basis denies those allegations.

34. The allegations in paragraph 34 purport to summarize external sources which speak for themselves. Mars otherwise denies the allegations in paragraph 34.

35. Mars lacks sufficient knowledge or information to determine the truth or accuracy of the allegations of paragraph 35.

36. This paragraph sets forth legal conclusions not requiring an answer. To the extent that

a response is required, Mars denies the allegations in this paragraph.

37. This paragraph sets forth legal conclusions not requiring an answer. To the extent that a response is required, Mars denies the allegations in this paragraph.

38. This paragraph sets forth legal conclusions not requiring an answer. To the extent that a response is required, Mars denies the allegations in this paragraph.

39. Denied.

40. Mars lacks sufficient knowledge or information to determine the truth or accuracy of the allegations of paragraph 40, and on this basis denies those allegations.

41. Mars lacks sufficient knowledge or information to determine the truth or accuracy of the allegations of paragraph 41, and on this basis denies those allegations.

42. Mars lacks sufficient knowledge or information to determine the truth or accuracy of the allegations of paragraph 42, and on this basis denies those allegations.

43. Mars lacks sufficient knowledge or information to determine the truth or accuracy of the allegations of paragraph 43, and on this basis denies those allegations.

44. This paragraph sets forth legal conclusions not requiring an answer. To the extent that a response is required, Mars denies the allegations in this paragraph.

45. The allegations in paragraph 45 purport to summarize external sources which speak for themselves. Mars otherwise denies the allegations in paragraph 45.

46. Mars lacks sufficient knowledge or information to determine the truth or accuracy of the allegations of paragraph 46, and on this basis denies those allegations.

47. The allegations in paragraph 47 purport to summarize external sources which speak for themselves. Mars otherwise denies the allegations in paragraph 47.

48. The allegations in paragraph 48 purport to summarize external sources which speak for themselves. Mars otherwise denies the allegations in paragraph 48.

49. The allegations in paragraph 49 purport to summarize external sources which speak for themselves. Mars otherwise denies the allegations in paragraph 49.

50. The allegations in paragraph 50 purport to summarize external sources which speak

for themselves. Mars otherwise denies the allegations in paragraph 50.

51. The allegations in paragraph 51 purport to summarize external sources which speak for themselves. Mars otherwise denies the allegations in paragraph 51.

52. The allegations in paragraph 52 purport to summarize external sources which speak for themselves. Mars otherwise denies the allegations in paragraph 52.

53. Mars lacks sufficient knowledge or information to determine the truth or accuracy of the allegations of paragraph 53, and on this basis denies those allegations.

54. Mars lacks sufficient knowledge or information to determine the truth or accuracy of the allegations of paragraph 54, and on this basis denies those allegations.

55. Mars lacks sufficient knowledge or information to determine the truth or accuracy of the allegations of paragraph 55, and on this basis denies those allegations.

56. The allegations in paragraph 56 purport to summarize external sources which speak for themselves. Mars otherwise denies the allegations in paragraph 56.

57. The allegations in paragraph 57 purport to summarize external sources which speak for themselves. Mars otherwise denies the allegations in paragraph 57.

58. The allegations in paragraph 58 purport to summarize external sources which speak for themselves. Mars otherwise denies the allegations in paragraph 58.

59. The allegations in paragraph 59 purport to summarize external sources which speak for themselves. Mars otherwise denies the allegations in paragraph 59.

60. The allegations in paragraph 60 purport to summarize external sources which speak for themselves. Mars otherwise denies the allegations in paragraph 60.

61. This paragraph sets forth legal conclusions not requiring an answer. To the extent that a response is required, Mars denies the allegations in this paragraph.

62. This paragraph sets forth legal conclusions not requiring an answer. To the extent that a response is required, Mars denies the allegations in this paragraph.

63. The allegations in paragraph 63 purport to summarize external sources which speak for themselves. Mars otherwise denies the allegations in paragraph 63.

64. This paragraph sets forth legal conclusions not requiring an answer. To the extent that a response is required, Mars denies the allegations in this paragraph.

65. This paragraph sets forth legal conclusions not requiring an answer. To the extent that a response is required, Mars denies the allegations in this paragraph.

66. This paragraph sets forth legal conclusions not requiring an answer. To the extent that a response is required, Mars denies the allegations in this paragraph.

67. The allegations in paragraph 67 purport to summarize external sources which speak for themselves. Mars otherwise denies the allegations in paragraph 67.

68. This paragraph sets forth legal conclusions not requiring an answer. To the extent that a response is required, Mars denies the allegations in this paragraph.

69. This paragraph sets forth legal conclusions not requiring an answer. To the extent that a response is required, Mars denies the allegations in this paragraph.

70. This paragraph sets forth legal conclusions not requiring an answer. To the extent that a response is required, Mars denies the allegations in this paragraph.

71. This paragraph sets forth legal conclusions not requiring an answer. To the extent that a response is required, Mars denies the allegations in this paragraph.

72. The allegations in paragraph 72 purport to summarize external sources which speak for themselves. Mars otherwise denies the allegations in paragraph 72.

73. Denied.

74. Denied.

75. Denied.

76. Denied.

77. The allegations in paragraph 77 purport to summarize external sources which speak for themselves. Mars otherwise denies the allegations in paragraph 77.

78. This paragraph sets forth legal conclusions not requiring an answer. To the extent that a response is required, Mars denies the allegations in this paragraph.

79. Denied.

80. Denied.

81. Denied.

82. Denied.

83. Denied.

84. This paragraph sets forth legal conclusions not requiring an answer. To the extent that a response is required, Mars denies the allegations in this paragraph.

85. This paragraph sets forth legal conclusions not requiring an answer. To the extent that a response is required, Mars denies the allegations in this paragraph.

86. This paragraph sets forth legal conclusions not requiring an answer. To the extent that a response is required, Mars denies the allegations in this paragraph.

87. This paragraph sets forth legal conclusions not requiring an answer. To the extent that a response is required, Mars denies the allegations in this paragraph.

88. This paragraph sets forth legal conclusions not requiring an answer. To the extent that a response is required, Mars denies the allegations in this paragraph.

89. This paragraph sets forth legal conclusions not requiring an answer. To the extent that a response is required, Mars denies the allegations in this paragraph.

90. This paragraph sets forth legal conclusions not requiring an answer. To the extent that a response is required, Mars denies the allegations in this paragraph.

91. This paragraph sets forth legal conclusions not requiring an answer. To the extent that a response is required, Mars denies the allegations in this paragraph.

92. Mars lacks sufficient knowledge or information to determine the truth or accuracy of the allegations of paragraph 92, and on this basis denies those allegations.

93. Mars lacks sufficient knowledge or information to determine the truth or accuracy of the allegations of paragraph 93, and on this basis denies those allegations.

94. The allegations in paragraph 94 purport to summarize external sources which speak for themselves. Mars otherwise denies the allegations in paragraph 94.

95. The allegations in paragraph 95 purport to summarize external sources which speak

for themselves. Mars otherwise denies the allegations in paragraph 95.

96. The allegations in paragraph 96 purport to summarize external sources which speak for themselves. Mars otherwise denies the allegations in paragraph 96.

97. The allegations in paragraph 97 purport to summarize external sources which speak for themselves. Mars otherwise denies the allegations in paragraph 97.

98. The allegations in paragraph 98 purport to summarize external sources which speak for themselves. Mars otherwise denies the allegations in paragraph 98.

99. The allegations in paragraph 99 purport to summarize external sources which speak for themselves. Mars otherwise denies the allegations in paragraph 99.

100. The allegations in paragraph 100 purport to summarize external sources which speak for themselves. Mars otherwise denies the allegations in paragraph 100.

101. The allegations in paragraph 101 purport to summarize external sources which speak for themselves. Mars otherwise denies the allegations in paragraph 101.

102. The allegations in paragraph 102 purport to summarize external sources which speak for themselves. Mars otherwise denies the allegations in paragraph 102.

103. The allegations in paragraph 103 purport to summarize external sources which speak for themselves. Mars otherwise denies the allegations in paragraph 103.

104. The allegations in paragraph 104 purport to summarize external sources which speak for themselves. Mars otherwise denies the allegations in paragraph 104.

105. The allegations in paragraph 105 purport to summarize external sources which speak for themselves. Mars otherwise denies the allegations in paragraph 105.

106. The allegations in paragraph 106 purport to summarize external sources which speak for themselves. Mars otherwise denies the allegations in paragraph 106.

107. The allegations in paragraph 107 purport to summarize external sources which speak for themselves. Mars otherwise denies the allegations in paragraph 107.

108. The allegations in paragraph 108 purport to summarize external sources which speak for themselves. Mars otherwise denies the allegations in paragraph 108.

109. Mars lacks sufficient knowledge or information to determine the truth or accuracy of the allegations of paragraph 109, and on this basis denies those allegations.

110. Mars lacks sufficient knowledge or information to determine the truth or accuracy of the allegations of paragraph 110, and on this basis denies those allegations.

111. The allegations in paragraph 111 purport to summarize external sources which speak for themselves. Mars otherwise denies the allegations in paragraph 111.

112. Mars lacks sufficient knowledge or information to determine the truth or accuracy of the allegations of paragraph 112, and on this basis denies those allegations.

113. Mars lacks sufficient knowledge or information to determine the truth or accuracy of the allegations of paragraph 113, and on this basis denies those allegations.

114. Mars lacks sufficient knowledge or information to determine the truth or accuracy of the allegations of paragraph 114, and on this basis denies those allegations.

115. Mars lacks sufficient knowledge or information to determine the truth or accuracy of the allegations of paragraph 115, and on this basis denies those allegations.

116. The allegations in paragraph 116 purport to summarize external sources which speak for themselves. Mars otherwise denies the allegations in paragraph 116.

117. Denied.

118. Denied.

119. Denied.

120. Mars lacks sufficient knowledge or information to determine the truth or accuracy of the allegations of paragraph 120, and on this basis denies those allegations.

121. Mars lacks sufficient knowledge or information to determine the truth or accuracy of the allegations of paragraph 121, and on this basis denies those allegations.

122. Mars lacks sufficient knowledge or information to determine the truth or accuracy of the allegations of paragraph 122, and on this basis denies those allegations.

123. Denied.

124. Denied.

125. This paragraph sets forth legal conclusions not requiring an answer. To the extent that a response is required, Mars denies the allegations in this paragraph.

126. This paragraph sets forth legal conclusions not requiring an answer. To the extent that a response is required, Mars denies the allegations in this paragraph.

127. Denied.

128. Admitted.

129. Mars lacks sufficient knowledge or information to determine the truth or accuracy of the allegations of paragraph 129, and on this basis denies those allegations.

130. This paragraph sets forth legal conclusions not requiring an answer. To the extent that a response is required, Mars denies the allegations in this paragraph.

131. Mars lacks sufficient knowledge or information to determine the truth or accuracy of the allegations of paragraph 131, and on this basis denies those allegations.

132. Mars lacks sufficient knowledge or information to determine the truth or accuracy of the allegations of paragraph 132, and on this basis denies those allegations.

133. Denied.

134. Denied.

135. Denied.

136. This paragraph sets forth legal conclusions not requiring an answer. To the extent that a response is required, Mars denies the allegations in this paragraph.

137. This paragraph sets forth legal conclusions not requiring an answer. To the extent that a response is required, Mars denies the allegations in this paragraph.

138. This paragraph sets forth legal conclusions not requiring an answer. To the extent that a response is required, Mars denies the allegations in this paragraph.

139. Denied.

140. Denied.

141. Plaintiffs have dismissed their allegations related to the milk chocolate in the Product. Mars therefore does not answer this paragraph.

142. Plaintiffs have dismissed their allegations related to the milk chocolate in the Product.
Mars therefore does not answer this paragraph.

143. Plaintiffs have dismissed their allegations related to the milk chocolate in the Product.
Mars therefore does not answer this paragraph.

144. Plaintiffs have dismissed their allegations related to the milk chocolate in the Product.
Mars therefore does not answer this paragraph.

145. Plaintiffs have dismissed their allegations related to the milk chocolate in the Product.
Mars therefore does not answer this paragraph.

146. Plaintiffs have dismissed their allegations related to the milk chocolate in the Product.
Mars therefore does not answer this paragraph.

147. Plaintiffs have dismissed their allegations related to the milk chocolate in the Product.
Mars therefore does not answer this paragraph.

148. Plaintiffs have dismissed their allegations related to the milk chocolate in the Product.
Mars therefore does not answer this paragraph.

149. Plaintiffs have dismissed their allegations related to the milk chocolate in the Product.
Mars therefore does not answer this paragraph.

150. Plaintiffs have dismissed their allegations related to the milk chocolate in the Product.
Mars therefore does not answer this paragraph.

151. Denied.

152. Denied.

153. Denied.

154. Denied.

155. Denied.

Jurisdiction and Venue

156. Admitted.

157. Admitted.

158. Mars lacks sufficient knowledge or information to determine the truth or accuracy of

the allegations of paragraph 158, and on this basis denies those allegations.

159. Mars lacks sufficient knowledge or information to determine the truth or accuracy of the allegations of paragraph 159, and on this basis denies those allegations.

160. Denied.

161. Admitted.

162. Admitted.

163. Denied.

Parties

164. Mars lacks sufficient knowledge or information to determine the truth or accuracy of the allegations of paragraph 164, and on this basis denies those allegations.

165. Mars lacks sufficient knowledge or information to determine the truth or accuracy of the allegations of paragraph 165, and on this basis denies those allegations.

166. Mars admits it is a Delaware limited liability company and is not a citizen of New York. Mars denies the remainder of paragraph 166.

167. Mars lacks sufficient knowledge or information to determine the truth or accuracy of the allegations of paragraph 167, and on this basis denies those allegations.

168. Mars lacks sufficient knowledge or information to determine the truth or accuracy of the allegations of paragraph 168, and on this basis denies those allegations.

Class Allegations

169. Denied.

170. Denied.

171. Denied.

172. Denied.

173. Denied.

174. Denied.

175. Denied.

176. Denied.

New York General Business Law (“GBL”) Claim

177. Mars admits that Plaintiff purports to assert causes of action under the consumer protection statutes of New York, General Business Law (“GBL”) §§ 349 & 350.

178. Denied.

179. Denied.

180. Denied.

181. Denied.

Negligent Misrepresentation Claim

182. Mars incorporates by reference its answers to all allegations as if set forth fully herein.

183. Denied.

184. Denied.

185. Denied.

186. Denied.

187. Denied.

188. Denied.

Warranty Claims

189. Mars incorporates by reference its answers to all allegations as if set forth fully herein.

190. This paragraph sets forth legal conclusions not requiring an answer. To the extent that a response is required, Mars denies the allegations in this paragraph.

191. Denied.

192. Denied.

193. Denied.

194. Denied.

195. Denied.

196. Denied.

197. Denied.

Fraud Claim

198. Mars incorporates by reference its answers to all allegations as if set forth fully herein.
199. Denied.
200. Denied.
201. Denied.
202. Denied.
203. Denied.

Unjust Enrichment Claim

204. Mars incorporates by reference its answers to all allegations as if set forth fully herein.
205. Denied.

PLAINTIFF'S PRAYER FOR RELIEF

The Complaint sets forth a prayer for relief requested by the Plaintiffs to which no response is required. For avoidance of doubt, Mars denies Plaintiffs are entitled to the relief sought, or to any other relief, against Mars.

SEPARATE AND AFFIRMATIVE DEFENSES

Without assuming the burden of proof on any matters that would otherwise rest with Plaintiffs, and expressly denying any and all wrongdoing, Mars alleges the following additional reasons why Plaintiffs and the purported classes are not entitled to any relief:

I. FIRST AFFIRMATIVE DEFENSE

(Equitable Relief Unavailable)

Plaintiffs are not entitled to equitable relief because, if Plaintiffs are entitled to a remedy, which Mars denies, Plaintiffs have adequate legal remedies. No threat of immediate harm exists sufficient to support a grant of injunctive relief.

II. SECOND AFFIRMATIVE DEFENSE

(Failure to State a Claim)

The FAC fails to state a claim against Mars on which relief can be granted.

III. THIRD AFFIRMATIVE DEFENSE

(Performance of Duties)

Mars has fully performed any and all contractual, statutory, and other duties, and Plaintiffs are therefore estopped from asserting any cause of action against Mars.

IV. FOURTH AFFIRMATIVE DEFENSE

(Substantial Compliance)

Mars has substantially complied with the requirements of the law as they pertain to this lawsuit and such substantial compliance bars Plaintiffs' claims.

V. FIFTH AFFIRMATIVE DEFENSE

(Actions Pursuant to Local, State or Federal Authority)

Mars is not liable for any acts or omissions undertaken by or at the direction of local, state or federal authority, including, without limitation, acts or omissions made in accordance with regulations, ordinances, statutes, and laws applicable at the time of the acts or omissions at issue.

VI. SIXTH AFFIRMATIVE DEFENSE

(Superseding Causes)

Any and all violations alleged in Plaintiffs' Complaint were the result of superseding or intervening causes arising from the acts or omissions of parties that Mars neither controlled nor had a legal right to control, and such alleged violations were not proximately or otherwise caused by any act, omission, or other conduct of Mars.

VII. SEVENTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

If Plaintiffs have suffered any damages or injury in fact, which Mars expressly denies, Mars alleges that Plaintiffs' recovery is barred by their failure to mitigate, reduce, or otherwise avoid damages or injuries.

VIII. EIGHTH AFFIRMATIVE DEFENSE

(Aggravation of Harm)

To the extent any harm exists, Mars is informed and believes and, on that basis, alleges that Plaintiffs' actions have aggravated such harm, and thus, any recovery from Plaintiffs' FAC for such

harm should be barred or reduced accordingly.

IX. NINTH AFFIRMATIVE DEFENSE

(Equitable Estoppel)

Based on Plaintiffs' conduct, Plaintiffs' claims are barred by the doctrine of equitable estoppel.

X. TENTH AFFIRMATIVE DEFENSE

(Waiver)

Based on Plaintiffs' conduct, Plaintiffs' claims are barred by the doctrine of waiver.

XI. ELEVENTH AFFIRMATIVE DEFENSE

(Laches)

By virtue of Plaintiffs' unreasonable delay in commencing this action, which duly has caused prejudice to Mars, the FAC and each purported cause of action asserted therein are barred by the doctrine of laches.

XII. TWELFTH AFFIRMATIVE DEFENSE

(Unclean Hands)

The FAC and each and every purported claim against Mars is barred by the doctrine of unclean hands in that Plaintiffs' own actions have caused the damages Plaintiffs may have incurred, if any.

XIII. THIRTEENTH AFFIRMATIVE DEFENSE

(Unjust Enrichment)

Any award to the Plaintiffs in this action would constitute unjust enrichment.

XIV. FOURTEENTH AFFIRMATIVE DEFENSE

(Attorneys' Fees Improper)

Plaintiffs' FAC fails to state a claim or set forth facts sufficient to support a claim for attorneys' fees.

XV. FIFTEENTH AFFIRMATIVE DEFENSE

(Uncertainty)

The FAC and the cause of action therein presented are vague, ambiguous, and uncertain. Mars

reserves the right to add additional defenses as the factual bases for each of Plaintiffs' claims and allegations becomes known.

XVI. SIXTEENTH AFFIRMATIVE DEFENSE

(Mootness)

Plaintiffs are not entitled to an injunction to the extent Mars has already ceased the allegedly unlawful conduct.

XVII. SEVENTEENTH AFFIRMATIVE DEFENSE

(Violation of Right to Free Speech)

To the extent Plaintiffs purport to seek equitable relief to mandate the specific content of Mars's advertising or the content of the products labels, Plaintiffs' FAC violates Mars's right to freedom of speech under the First Amendment of the United States Constitution.

XVIII. EIGHTEENTH AFFIRMATIVE DEFENSE

(Set-off)

Any recovery by Plaintiffs should be offset and diminished by the value to the general public of the use of the products.

XIX. NINETEENTH AFFIRMATIVE DEFENSE

(Punitive Damages Are Not Available)

Plaintiffs' claims do not permit the recovery of punitive damages.

XX. TWENTIETH AFFIRMATIVE DEFENSE

(Preemption)

All or some of the alleged causes of action in the FAC are preempted by federal law.

XXI. TWENTY-FIRST AFFIRMATIVE DEFENSE

(Statute of Limitation)

All or some of Plaintiffs' claims and damages are barred, reduced, and/or limited by the applicable statutes of limitations.

XXII. TWENTY-SECOND AFFIRMATIVE DEFENSE

(No Private Right of Action)

All or some of Plaintiffs' causes of action are unavailable because Plaintiffs do not have a private right of action to enforce the FDCA.

XXIII. TWENTY-THIRD AFFIRMATIVE DEFENSE

(No Standing)

Plaintiffs lack standing to assert the claims in the Complaint.

XXIV. TWENTY-FOURTH AFFIRMATIVE DEFENSE

(*De Minimis* Violations)

Plaintiffs' claims are barred because the claimed violations are "*de minimis*."

XXV. TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Improper Class Action)

The Complaint does not satisfy the requirements of Fed. R. Civ. P. 23(a) and 23(b).

XXVI. TWENTY-SIXTH AFFIRMATIVE DEFENSE

(Compliance with Law)

The Complaint fails because Mars has made good faith efforts to comply, and has complied, with all relevant laws and regulations.

XXVII. TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(Adequate Remedy of Law)

Plaintiffs' equitable claims fail because Plaintiffs have an adequate remedy at law.

XXVIII. TWENTY-EIGHTH AFFIRMATIVE DEFENSE

(Failure to Satisfy Statutory Prerequisites to Suit)

All or some of Plaintiffs' causes of action are unavailable because Plaintiffs failed to satisfy the statutory prerequisites to suit, including failure to provide notice.

XXIX. TWENTY-NINTH AFFIRMATIVE DEFENSE

(Reservation of Additional Defenses)

Mars hereby reserves the right to amend its answer to raise additional affirmative defenses as they become available or apparent to it through discovery in this matter or otherwise.

DEFENDANT'S PRAYER FOR RELIEF

WHEREFORE, Defendant Mars prays for judgment as follows:

1. That this action not be certified as a class action;
 2. That Plaintiffs and/or the purported Class Members take nothing by way of the Complaint;
 3. That judgment be entered in favor of Defendant and against Plaintiff;
 4. That Defendant be awarded its costs of suit;
 5. That Defendant be awarded its attorneys' fees to the extent permitted under applicable law;
- and
6. That the Court award Defendant such other and further relief as this Court may deem just and proper.

Dated: January 15, 2020

Respectfully submitted,

/s/ Omid G. Banuelos

Omid G. Banuelos

David A. Forkner (*Pro Hac Vice*)

John Turquet Bravard (*Pro Hac Vice*)

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Attorneys for Mars Wrigley Confectionery US, LLC

CERTIFICATE OF SERVICE

I hereby certify that on January 15, 2020, a true and correct copy of the foregoing pleading was filed on the CM/ECF system, which will send notification of such filing to all parties and counsel in this case.

/s/ Omid G. Banuelos
Omid G. Banuelos